

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 354 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SAMBHUSINGH LAXMANSINGH GAJESINGH-KI BHAGAL

Versus

UNION OF INDIA

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Appearance:

MR DN PANDYA for Petitioner

MR JD AJMERA for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 07/04/97

ORAL JUDGEMENT

1. On 3rd March, 1997, the Civil Application No.2150/97, filed by the petitioner was allowed by this Court and the petitioner has been granted the permission to amend the Special Civil Application as prayed.

2. The counsel for the respondents prayed for time for filing reply to the amended Special Civil Application. Taking into consideration the fact that the

respondents are the Union of India and its Officers, more than one month's time was granted. Today the counsel for the respondents prayed for further time to file the reply to the amended Special Civil Application and ground has been given that the reply has been prepared, but the same has been sent to the concerned Officer for verification. I fail to understand this course adopted by the counsel for the respondents. The very fact that the reply has been sent for signature and verification goes to show that it has been prepared without taking the instructions and assistance of the respondents. That is the reason that in the reply the correct facts are not coming. However, whatever course adopted by the respondents in the matter of filing of the reply is of their concern, and the Court has nothing to say. But on this ground no further indulgence can be granted. More than one month's time has been granted and it cannot be said to be inadequate and insufficient time to file the reply to the amended writ petition. The prayer made by the counsel for the respondents is rejected.

3. The petitioner, Security Guard in Central Industrial Security Force, filed this Special Civil Application before this Court and challenge has been made to the order annexure 'F' under which he was ordered to be dismissed from services. The petitioner was served with the chargesheet and after holding an inquiry in which he was found to be guilty of the charges, the order of dismissal has been made.

4. The learned counsel for the petitioner challenging the order of the dismissal of the petitioner from the services raised several contentions, but I do not consider it necessary to advert to all those contentions except the one which according to me is sufficient to allow this writ petition.

5. By referring to pages No.67 to 69, 73 to 79, 84 to 87, 93 to 94, 98 to 102, 108 to 113 and 147 to 150 of the Special Civil Application, the counsel for the petitioner contended that the Inquiry Officer has acted in the inquiry as a prosecutor. It has further been contended that the Inquiry Officer has taken the interest in the matter to the extent to see that the petitioner is punished in the matter. It is not the job of the Inquiry Officer to examine the witness himself or to put the questions to the witness himself. Not only this, he has gone to the extent to in fact cross-examine the petitioner by putting questions. In view of these facts, the counsel for the petitioner concluded that the inquiry has been conducted by an Officer who cannot be said to an

impartial and unbiased person.

6. On the other hand, the counsel for the respondents, Shri J.D. Ajmera, contended that the petitioner has not objected to the course adopted by the Inquiry Officer in the present case at any stage, and as such, this point is not available to him to raise before this Court. It has next been contended that the petitioner was present throughout the inquiry and he has not raised the objection in the matter against the Inquiry Officer to put the questions to the witnesses as well as to himself, and as such, he was not having any grievance whatsoever in the matter. Lastly, the counsel for the respondents contended that this Court should not interfere in the matter on this ground only, where there are other serious charges against the petitioner.

7. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

8. On 9th August, 1980, the statement of Shri P.P. Dhyani was recorded. He was the witness of the department. His examination-in-chief is only of about ten lines. The Inquiry Officer has put to this witness as many as 13 questions. I have gone through the questions put to this witness by the Inquiry Officer and I am satisfied that he has tried to act as a prosecutor. He has made an attempt to fill up the lacunae in the statement and to take out something from the witness against the petitioner. On the same date, the statement of one Padamsingh was recorded and the Inquiry Officer has put to him as many as nine questions and these questions are in the nature of getting the material against the petitioner.

9. From the pages which have been referred by the learned counsel for the petitioner of the Special Civil Application, which are the copies of the statements of the witnesses, it is clear that to all the witnesses who have been produced from the side of the department, the Inquiry Officer has put number of questions. These questions have been put by the Inquiry Officer before the cross-examination of the witnesses. The Inquiry Officer has made an attempt to make it to be a part of the examination-in-chief. It is understandable that some of the questions may be put by the Inquiry Officer to find out something ambiguous in the statement of the witness, but he cannot act as a prosecutor and the presenting officer to record the statement of the witness i.e. the examination-in-chief. That is not the job of the Inquiry Officer. As I am satisfied from the questions put by the

Inquiry Officer to two of the department witnesses that he has acted as a prosecutor in the matter, it is not necessary to refer to all the questions which have been put by the Inquiry Officer to other witnesses and the petitioner. But questions put to the other witnesses are of the nature of getting something against the petitioner.

10. In view of this fact, the order of dismissal which has been passed on the inquiry conducted by the Inquiry Officer who has acted himself as a prosecutor cannot be allowed to stand.

11. The next contention raised by the learned counsel for the respondents is devoid of any substance. It is true that the petitioner has not made any protest before the Inquiry Officer against the course adopted by him, but this Court cannot be oblivious of the fact that he was holding the lowest post in the Force and the Inquiry Officer was of the status of the Assistant Commandant. Otherwise also, when on the face of the inquiry, the Officer who conducted the same cannot be said to be an unbiased and impartial person, how this order of dismissal could have been allowed to stand by this Court only on the ground that the petitioner has not taken any objections. Fairness and impartiality is important in the matter and in case the inquiry conducted by the Inquiry Officer is not fair or he was not an unbiased person then certainly this court will not allow to suffer the dismissal by the petitioner on this technical point raised by the respondents. In such cases, the delinquent employee is not required to plead and prove that any prejudice has been caused to him. It is true that for any and every violation of a facet of natural justice, the order passed is altogether void and ought to be set aside without further inquiry. From the decision of the Apex Court, the position on this question can be stated in the following words:

1. Regulations which are of a substantive nature have to be complied with and in case of such provisions, the theory of substantial compliance would not be available.
2. Even among procedural provisions, there may be some provisions of fundamental nature which are to be complied with and in whose case the theory of substantial compliance may not be available.
3. In respect of procedural provisions other than of a fundamental nature, the theory of substantial

compliance would be available. In such cases, the complaint/objection of this score have to be judged on the touchstone of prejudice. In other words, the test is, all things taken together whether delinquent officer/employee had or did not had a fair hearing. The question which provision falls in which of the aforesaid categories is a matter to be decided in each case having regard to the nature and character of the relevant provision.

12. So where the Inquiry Officer has acted himself as a prosecutor then it is certainly a case where the inquiry cannot be said to be conducted by an unbiased person and in such matters, the prejudice is inherently caused to the delinquent employee. This cannot be said to be a case where some sort of procedural provision, noncompliance of which would not have caused any prejudice to the petitioner.

13. Then the question does arise that what relief should be granted to the petitioner. The learned counsel for the petitioner contended that when the order of dismissal is bad then the relief of the reinstatement with full back-wages and other consequential benefits should be granted to the petitioner. But I do not find any substance in this contention. The dismissal order has not been found bad by this Court on the ground that no charges are proved or established against the petitioner. The order of dismissal has been found to be illegal by this Court only on the ground that the inquiry conducted against the petitioner was not fair and reasonable. The Inquiry Officer was a person who acted as a prosecutor, and as such, he was a biased person.

14. It is settled law that the when the inquiry was found to be faulty, it could not be proper to direct the reinstatement with consequential benefits of the officer/employee. The matter has to be remitted to the disciplinary authority to follow the procedure from the stage at which the fault was pointed out and to take the action in accordance with law. In such matters, the delinquent officer/employee pending inquiry must be deemed to be under suspension. Reference in this respect may have to the decision of the Apex Court in the case of State of Punjab & Ors. vs. Dr. Harbhajan Singh Greasy reported in JT 1996 (5) SC 403. The Apex Court held as under:

It is seen that the Enquiry Officer's report is based on the alleged admission made by

the respondent. But, unfortunately, the Enquiry Officer has not taken his admission in writing. Subsequently, the respondent has denied having made any admission. As against the denial of the delinquent, we have only the statement of the Enquiry Officer which is not supported by any statement in writing taken from the respondent. Under those circumstances, High Court may be justified in setting aside the order of dismissal. It is now well settled law that when the enquiry was found to be faulty, it could not be proper to direct reinstatement with consequential benefits. Matter requires to be remitted to the disciplinary authority to follow the procedure from the stage at which the fault was pointed out and to take action according to law. Pending enquiry, the delinquent must be deemed to be under suspension. The consequential benefits would depend upon the result of the enquiry and order passed thereon. The High Court had committed illegality in omitting to give the said direction. Since the respondent had retired from service, now no useful purpose will be served in directing to conduct enquiry afresh. However, the respondent is not entitled to the back wages as he voided responsibility as a Doctor to treat on flood victims and that was cause for the suspension.

15. In view of the settled position of law, the petitioner shall not be entitled for the reinstatement with all the consequential benefits.

16. In the result, this writ petition succeeds in part. The order annexure 'F' dated 13th January, 1982, of the respondent No.3 is quashed and set aside and the matter is remitted to the said authority to proceed in the matter afresh after appointing another Inquiry Officer to hold the inquiry in accordance with law. The matter is old one and it is expected of the respondent No.3 to decide this matter within a period of six months from the date of receipt of certified copy of this order. Pending inquiry, the petitioner shall remain under suspension, and he shall be entitled for the subsistence allowance to be calculated on the basis of last pay drawn. Rule is made absolute in the aforesaid terms with no order as to costs.

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